

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

ORDER

Criminal No. 04-398 ADM/FLN

Michael Troy Olson,

Defendant.

Lisa D. Kirkpatrick, Esq., Assistant United States Attorney, United States Attorney's Office, Minneapolis, MN, on behalf of Plaintiff.

Michael Troy Olson, pro se.

This matter is before the undersigned United States District Judge for a ruling on Defendant Michael Troy Olson's ("Olson") Motion for relief under Federal Rule of Civil Procedure 60(b) [Docket No. 121] ("Motion") and Motion for Appointment of Counsel [Docket No. 122]. The United States of America has filed a Motion to Dismiss [Docket No. 123].

Olson's Motion asserts relief under Johnson v. United States, 135 S.Ct. 2551 (2015), the recent case that invalidated the residual clause of the Armed Career Criminal Act ("ACCA"). This is not the first time Olson has pursued this avenue of relief, having twice sought permission from the Eighth Circuit to file successive 28 U.S.C. § 2255 motions to raise an argument predicated on Johnson. Olson's requests were denied because "Olson has three prior convictions properly classified as violent felonies under the elements clause or enumerated clause of the ACCA."

Mot. Dismiss Ex. 1 at 2.

Although Olson's Motion is stylized as invoking Rule 60(b) as the basis for relief, the argument Olson advances is only available by way of a motion under § 2255. See Lopez-Lopez

v. Sanders, 590 F.3d 905, 907 (8th Cir. 2010) (“A federal inmate generally must challenge a conviction or sentence through a § 2255 motion.”). Since the Eighth Circuit has not authorized Olson to bring a successive § 2255 motion, the Motion must be dismissed. See United States v. Patton, 309 F.3d 1093, 1094 (8th Cir. 2002) (noting that authorization to file successive § 2255 motions cannot be bypassed by invoking different procedural rules).

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS
HEREBY ORDERED** that:

1. Defendant Michael Troy Olson’s “Motion Filed Pursuant to Federal Rules of Civil Procedures: Under 60(b)(5)&(6)” [Docket No. 121] is **DENIED**;
2. Defendant Michael Troy Olson’s Motion for Appointment of Counsel [Docket No. 122] is **DENIED**; and
3. United States of America’s Motion to Dismiss [Docket No. 123] is **GRANTED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: April 11, 2016.